

<b>DEPARTMENTAL REGULATION</b>		Number: 4330-001
SUBJECT: Departmental Policy For Program Compliance Reviews	DATE: June 27, 1986	
	OPI: Office of Advocacy and Enterprise	

1 PURPOSE

The purpose of this regulation is to establish policy, provide guidance, and unify compliance review systems for all USDA agencies.

2 CANCELLATION

This regulation replaces Chapter 2, Section 1, of 9AR.

3 POLICY

USDA agencies are required to have a compliance review system. Compliance reviews at all levels of administration are reliable means of identifying compliance and noncompliance in each program's delivery of benefits and services. The civil rights laws and USDA nondiscrimination regulations are the standards by which compliance reviews measure the overall effectiveness of program delivery of Federal assistance. See Appendix A for Compliance Requirements.

4 ABBREVIATIONS

OAE-EO-Office of Advocacy and Enterprise-Equal Opportunity.

5 DEFINITIONS

Compliance reviews. Regular, systematic inspections and evaluations of USDA program and services delivery systems to determine compliance with civil rights laws and Department nondiscrimination regulations.

6 REFERENCES

a Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-2000d-4, which prohibits discrimination based on race, color, or national origin.

b Title IX of the Education Amendments of 1972, 20 U.S.C. 1681-1686, which prohibits discrimination based on sex or blindness in educational programs.

c Section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794, which prohibits discrimination based on handicap.

d Age Discrimination Act of 1975 (42 U.S.C. 6101-6107), which prohibits discrimination based on age.

e Section 701 of the Equal Credit Opportunity Act, 15 U.S.C., 1691, and implementing regulations of the Board of Governors of the Federal Reserve System, 12 CFR Part 202, which prohibits discrimination on the basis of race, color, religion, national origin or marital status or age in credit transactions.

f Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619 which prohibits discriminatory housing practices.

g Executive Order 12250, Leadership and coordination of nondiscrimination laws.

h Department of Justice Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964, 28 CFR 50.3.

i Department of Justice Regulations for the Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs 28 CFR 42.401 to 42.415.

j USDA Nondiscrimination regulations, 7 CFR Part 15.

## 7 RESPONSIBILITIES

a OAE-EO will:

(1) Provide leadership and coordination for the Department's civil rights program to ensure agency compliance with civil rights laws and USDA nondiscrimination regulations.

(2) Revise and develop, with agency assistance, Departmental standards for conducting compliance reviews.

(3) Provide guidance to agencies regarding technical assistance and compliance review procedures.

(4) Provide training to agencies on Department civil rights policies and, upon request, assist the agencies to develop training materials.

(5) Evaluate the provision of services to recipients and/or beneficiaries by monitoring the compliance activities of agencies.

b Agencies will:

(1) Develop and maintain systems to implement the Department's policy for conducting compliance reviews.

(2) Provide adequate resources and personnel to support the established compliance systems.

(3) Collect and maintain the required records and data necessary to determine compliance or noncompliance in their programs.

(4) Follow-up on findings of noncompliance to ensure that corrective action is taken.

(5) Refer and exchange noncompliance information when a recipient is found in noncompliance and is the recipient of financial assistance from another federal agency.

(6) Provide civil rights compliance training for their program staffs and recipients who conduct reviews.

(7) Prepare and follow its Annual Implementation Plan.

(8) Make available records of compliance review activities for evaluation by OAE-EO.

## 8 TYPES OF PROGRAM COMPLIANCE REVIEWS

There are three types of reviews used to determine a program's compliance. They are: Required Reviews by Agencies; Assessment Reviews by Agencies and OAE-EO; and, Special Reviews by Agencies and/or OAE-EO.

a Required Reviews by Agencies. USDA Agencies which provide Federal assistance are required to review their programs for continuous compliance with civil rights laws and USDA nondiscrimination regulations. This is to be accomplished by conducting pre-award and post-award reviews.

These reviews may be conducted separately or as part of a program review.

(1) A pre-award review is an evaluation of the compliance posture of an applicant for USDA assistance prior to the approval of that assistance. Applicants likely to be approved for USDA assistance are subject to a pre-award review.

(2) A post-award review is an inspection and/or evaluation of the program's delivery system after USDA assistance has been provided or extended. The agency's system for conducting post-award reviews may be cyclic, in that all programs will be reviewed within a set period of time, or, the reviews may be based on a priority system. Review priorities should be based on agency determinations of potential for noncompliance problems within individual assistance programs.

(3) Some programs may require annual reviews, others may require a review every three to five years. The Agencies will determine which method best serves their objectives and reflect their decision in the Annual Implementation Plan submitted to OAE-EO.

b Assessment Reviews by Agencies and OAE-EO

(1) Agencies have many levels of administration. Policy decisions, directives and guidelines flow from the National office to the various levels of field and recipient offices. Assessment reviews are inspections and/or evaluations based on the following suggested criteria. The criteria will be used by agencies and OAE-EO to determine the need for an assessment review and the particular geographical area of a given program to be reviewed. The criteria are not all-inclusive and agencies may include other criteria as necessity requires. They are as follows:

(a)  
Receipt of a disproportionate number of complaints in a particular program or geographical area.

(b)  
Program data which indicates an unexplained decrease in minority participation in an agency program.

(c)  
Referral by an outside source of a complaint about a

USDA program involving any part of USDA, e.g., U.S. Commission on Civil Rights.

(d)

Disclosure through an Office of Inspector General investigation of civil rights irregularities to OAE-EO or program agencies for follow-up action.

(e)

Recommendations or special requests, e.g., Congress, Secretary of Agriculture, Office of Inspector General, Agency Administrator.

(f)

Information indicating lack of basic civil rights enforcement conditions, e.g., no valid assurances, no system of public notification.

(g)

Media reports of possible civil rights violations in USDA programs.

(h)

Participation data which indicates inequitable distribution of benefits and services based on the economic and demographic profiles of a program area.

(i)

Complaint findings of discrimination that indicate the need for a compliance review of the program area.

(j)

Information from a required agency review that warrants a more in-depth field review of a program office.

(k)

Random selection of desk reviews which reveal that agency

review reports are consistently inadequate and poorly executed.

(2) Assessment Reviews are of two kinds. On-site field reviews and desk reviews. On-site field reviews are regularly conducted by the program agencies of their tiers of responsibility and periodically by OAE-EO.

(a)

OAE-EO may review a single agency or conduct, with agency assistance, a multi-agency review of many agency programs in a larger geographical area. Field reviews require coordination with National, Regional, State and local program officials. A written report showing the compliance status of the program reviewed is normally generated as a result of field reviews.

(b)

In addition to field assessment reviews, agencies and OAE-EO are responsible for desk assessment reviews of civil rights activity at all levels of agency operations. These desk reviews may be systematically scheduled or chosen at random. Agencies are to respond to OAE-EO's request for particular reviews and information within a specified time. OAE-EO will report its findings to the agencies within a specific time.

c Special Field Reviews. Special field reviews are unscheduled and may be conducted by either an agency and/or OAE-EO criteria for initiating a special field review are:

(1) When an agency of USDA receives an allegation that reflects prima facie evidence of noncompliance, an immediate review is to be conducted to determine the validity of the allegation.

(2) When it is reported to USDA that a protected class is being discriminated against in a specific program in a particular location, either the agency or OAE-EO is to review the program project area immediately to resolve the class action conflict.

(3) When an agency determines that there is sufficient evidence of discrimination which requires immediate action.

(4) Whenever an agency conducts a special field review the agency will forward a copy of the review report to OAE-EO. When OAE-EO conducts the review, they will forward a copy of the review report to the agency.

9 PROGRAM COMPLIANCE REVIEW REPORT AND DISTRIBUTION

a Each agency's report will reflect, at a minimum, civil rights laws and compliance requirements. A suggested reporting format follows:

(1) Table of Contents. The table of contents includes sections of the report for each program or project reviewed and supporting documents.

(2) Background. The background includes the subject and reason for the review; a brief profile of the recipient; the scope of the program operation; the time period covered by the review; and, the names of the reviewers.

(3) Summary. The summary is a brief resume containing the specific program area reviewed and the results of the review with an explanation given for noncompliance.

(4) Recommendations. This section indicates specific corrective actions required to resolve situations in which the program operation denies equal opportunity of participation. Recommendations can be made to improve program operations.

(5) Details of Findings. This section sets forth facts in a clear and concise manner to include those findings that require corrective actions.

b Although a narrative report is suggested, reports are acceptable in which yes or no answers are given to specific questions.

c Report distribution will be governed on a need to know basis. However, distribution must be made to ensure that corrective action is defined and implemented as required.

d While agencies have the latitude to determine the internal routing for distribution of the report, OAE-EO suggests that the

office positioned one level above the unit reviewed also receive a copy of the report, where appropriate.

e Distribution of the report will also include referrals to other Federal agencies as necessary.

## 10 FOLLOW-UP ACTION ON FINDINGS OF NONCOMPLIANCE

a In all findings of noncompliance, agencies are responsible for ensuring that corrective action is taken to resolve known equal opportunity problems and discriminatory practices. The agency is responsible for notifying the recipient in writing of the corrective action needed and the 30-day period given for the recipient to respond with a plan of corrective action.

b Agencies have the responsibility of reporting to OAE-EO all cases pending for more than 60 days in which voluntary compliance has not been achieved. OAE-EO has the responsibility of determining the efficiency of the corrective action. When further corrective action is necessary, OAE-EO, with the assistance of the program agency, will determine what additional corrective action is needed to achieve voluntary compliance. OAE-EO has the additional responsibility, in those cases where compliance has not been achieved within a 60 day period, to report the facts of the noncompliance to the Department of Justice in accordance with 28 CFR 42.411. See Appendix B for Enforcement Procedures.

## 11 REFERRALS AND INTERAGENCY COOPERATION

a When OAE-EO or an agency acquires information concerning a recipient's noncompliance that does not fall within the jurisdiction of USDA programs, the information is to be promptly referred to the appropriate Federal agency.

b When an agency conducts a compliance review or investigates a discrimination complaint against a recipient and discovers the recipient to have received financial assistance or has an application pending from another Federal agency, the agency will notify the other agency of the review or investigation and refer the findings of the review and/or investigation.

c Agencies are to cooperate with the lead Federal agency in resolving issues of noncompliance.

## 12 ANNUAL IMPLEMENTATION PLAN

a Each agency is responsible for preparing an Annual Implementation Plan. Agencies may use data developed for submission of the OMB A-11 Report to respond to items needed for the Annual Implementation Plan. The plan will identify by program, the agency program offices, recipients, local project areas, and subrecipients, the number of and dates of review, locations of all required and assessment reviews to be conducted during the year of the plan. The frequency and



location of the assessment compliance reviews may be based on the criteria and conditions presented earlier.

b The implementation plan will also include all training plans, staff allocations, and plans for the development of regulations and/or amendments for the year of the plan. The plans must be submitted to OAE-EO fifteen days prior to the beginning of the fiscal year.

## APPENDIX A

### COMPLIANCE REQUIREMENTS

#### 1 GENERAL REQUIREMENTS

##### a Laws and Regulations

All USDA programs will be administered in accordance with the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Equal Credit Opportunity Act, the Fair Housing Act, Executive Orders, Department of Justice's regulations enforcing nondiscrimination requirements, and Departmental and Agency regulations. Compliance ensures equal opportunity in all aspects of delivery of benefits and services to the public without regard to race, color, national origin, sex, age, and handicap.

##### b Definitions

(1) The word Minority is used to designate a person or group of persons belonging to the protected classes covered by the Civil Rights Act of 1964. They are the following:

###### (a)

American Indian or Alaskan Native. A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition (includes Alleuts and Eskimos).

###### (b)

Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, and Indian Subcontinent, or the Pacific Islands. This area includes, for

example, China, Japan, Korea, the Philippine Islands and Samoa.

(c)

Black (Not of Hispanic Origin). A person having origins in the black racial groups of Africa.

(d)

Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(2) The racial/ethnic category

identifies applicants and program participants by race, color, national origin and sex for the purpose of collecting and reporting racial/ethnic/sex data. For reporting purposes the categories include the four above, and White (Not of Hispanic Origin), person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

## 2 SPECIFIC REQUIREMENTS

The following is a listing of items that should be addressed in a compliance system:

### (1) Public Notification

The purpose of public notification is to inform participants and applicants (minority and non-minority) of their program rights and responsibilities, the policy of nondiscrimination and the procedures for filing a complaint. Agencies are responsible for ensuring that all programs include a public notification system. Effective public notification ensures:

(a) That each recipient or

program office takes action to inform program applicants and participants, particularly non-English speaking minorities, of their program rights and responsibilities and the steps necessary for participation;

(b) That each recipient or

program office advises applicants and participants at the service delivery points, of their right to file a complaint, how to file, and the complaint procedures;

(c) That all information used

by the agency or program recipients to inform the public about the program will contain the appropriate nondiscrimination statement;

(d) That each recipient or program office provide bilingual services and information as appropriate;

(e) That each recipient or program office provide information services to applicants and participants who are visually or hearing impaired as appropriate;

(f) That each recipient or program office take specific action to inform the general public, community leaders, grassroots organizations, and referral sources about the Agencies' programs and applicable civil rights requirements; and

(g) That each recipient or program office displays in its photographs and other graphics used to provide program related information, participants of different races, colors, sexes, and national origins to convey the message of equal opportunity.

(2) Data Collection and Reporting. The purpose of collecting racial/ethnic/sex participation data is to assist in determining both quantitatively and qualitatively how effectively agency programs are reaching covered groups, assist in the selection of locations for special field reviews, provide input for the annual evaluation report for OAE-EO and input for agency management analysis. Each agency is responsible for maintaining Agency responsibilities include:

(a) Ensuring that each recipient or program office has a system for collecting racial/ethnic/sex participation data and eligibility data for their program, e.g., governing and advisory boards and covered employment.

(b) Ensuring that the data is maintained for three fiscal years, under safeguards which will limit access of records to authorized personnel.

(3) Compliance Review. The purpose of compliance review is to determine, through program monitoring, if programs are operated in compliance with civil rights requirements and regulations of the Department. Compliance review includes required, assessment, and special reviews. Agency responsibilities include:

(a) Ensuring that all potential recipients are in compliance with civil rights requirements prior to approval of Federal program assistance;

(b) Notifying the recipients in writing immediately of any noncompliance situation and giving them an opportunity to take corrective action prior to further action.

(c) Conducting required and assessment compliance reviews of their tiers of program responsibility.

(d) Ensuring that Departmental civil rights standards are part of the required and assessment review coverage.

(e) Ensuring that corrective action is implemented on noncompliance findings and reports are forwarded to OAE-EO in noncompliance situations not corrected within 60 days.

(f) Conducting special reviews pursuant to criteria stated in Departmental regulations.

(4) Noncompliance Resolution. In a noncompliance situation, civil rights regulations require that efforts be made to the fullest extent practical to obtain voluntary compliance. Agencies are required to provide assistance and guidance to help achieve full compliance. Agency responsibilities include:

(a) Providing appropriate notice of noncompliance;

(b) Taking proper action when voluntary corrective action cannot be achieved by negotiation with the recipient agency; and

(c) Advising OAE when voluntary compliance cannot be achieved by negotiation and appropriate documentation.

(5) Complaints of Discrimination. The purpose of this requirement system is to ensure that complaints are accepted and handled in accordance with Departmental regulations. Agency responsibilities include:

(a) Forwarding all complaints alleging discrimination to the National Office, for processing;

(b) Performing preliminary inquiries on complaints referred by OAE-EO, as required;

(c) Preparing inquiry reports and reporting findings with suggested recommendations;

(d) Reviewing all tiers of agency complaint procedures to determine if the procedures meet regulatory requirements; and

(e) Ensuring that corrective action is taken on any noncompliance situation disclosed during an inquiry.

(6) Assurances. The purpose of this requirement is to ensure that written assurance agreements are obtained from all recipient agencies applying for Federal financial assistance, and to ensure that current assurance agreements are maintained. Agency's responsibilities include:

(a) Obtaining written assurance of nondiscrimination agreements from recipients;

(b) Ensuring that primary recipients obtain the assurance from local recipient agencies who extend program services and benefits; and

(c) Reviewing, approving, and monitoring the assurance agreements.

(7) Civil Rights Training. The purpose of the civil rights training requirement is to ensure that persons responsible for civil rights compliance monitoring understand their responsibilities. Agency responsibilities include:

(a) Training appropriate agency staffs:

(b) Providing training as ongoing technical assistance to all tiers or responsibility; and

(c) Ensuring coverage of specific civil rights areas in the training program.

(8) Access to Sources of Information. Agencies, recipients, and program offices are required to keep records and compliance review reports. In addition, access either by the agency or OAE-EO to books, records, accounts, and other sources of information pertinent to ascertaining compliance must be permitted upon reasonable request.

(9) Civil Rights Reports. Annual Civil Rights Reports are required by the Office of Management and Budget and the Department of Justice to assess agency civil rights compliance efforts and achievements. Agency's responsibilities include: Ensuring that comprehensive and accurate reports are submitted in a timely manner.

(10) Section 504 of the Rehabilitation Act of 1973. The purpose of this requirement is to ensure that agency program services and benefits are accessible and available to handicapped individuals. Agency responsibilities include:

(a) Advising recipients and program offices of their responsibilities in accordance with Departmental regulations;

(b) Ensuring that recipients and program offices complete self-evaluations as required;

(c) Ensuring that the protected class of handicap is incorporated into assurance agreements;

(d) Advising recipient and program offices of the need to designate a Section 504 Coordinator; and

(e) Ensuring that complaints alleging discrimination on the basis of handicap are processed in accordance with agency procedures.

(11) The Age Discrimination Act of 1975. The purpose of this requirement is to ensure that no person is denied participation in agency programs because of age. The requirement does not apply where age distinctions are established under the authority of any law that provides benefits or establishes criteria for participation on the basis of age. Agency responsibilities include:

(a) Advising the recipient and program offices of their responsibilities in accordance with Departmental regulations;

(b) Ensuring that recipient and program offices complete self evaluations as required;

(c) Ensuring that age as a protected class is incorporated in assistance agreements and included in the standard agency nondiscrimination statement as appropriate;

(d) Ensuring that complaints alleging age discrimination are processed in accordance with Departmental regulations; and

(e) Ensuring that grievance procedures have been developed for processing complaints alleging age discrimination.

(12) Title IX of the Education Amendments of 1972. The purpose of this requirement is to ensure that no individual is denied participation in agency education programs because of sex. Agency responsibilities include, where applicable:

(a) Advising the recipient and program offices of their responsibilities in accordance with Departmental regulations;

(b) Ensuring that recipients and program offices complete self-evaluations as required;

(c) Ensuring that sex as a protected class is incorporated into assurance agreements and included in the standard Agency nondiscrimination statement;

(e) Ensuring that a person has been designated as the Title IX Coordinator; and

(f) Ensuring that grievance procedures have been developed for handling complaints alleging discrimination based on sex.

(13) The Equal Credit Opportunity Act. This act prohibits an agency that extends credit from discriminating against an applicant on certain prohibited bases during any aspect of a credit transaction. This act adds "income from public assistance," and "exercised right under the Consumer Protection Act", as other bases of prohibited discrimination. Agency responsibilities includes, where applicable:

(a) Not discouraging applicants for credit on a prohibited basis.

(b) Requesting only the information about the applicant and applicant's spouse or former spouse as permitted by the Act.

(c) Not considering any information prohibited by the Act when evaluating an applicant for credit.

(d) Not making an applicant meet unnecessary requirements, e.g., not letting a

female applicant use her desired name; or unnecessarily requiring a co-signer, or the signature of a spouse on credit instruments.

(e) Notifying applicants of the action taken on their application within the required period of time, and including the ECOA Notice on notices of adverse action.

(f) Retaining records on applicants containing only the allowable information for the specified time period.

(g) Maintaining the required information on applicants for monitoring purposes and informing them that such information is needed for monitoring compliance with the Federal statutes prohibiting discrimination.

(14) Title VIII of the Civil Rights Act of 1968. This act prohibits discrimination in the sale, rental or financing of housing. Agencies having housing programs are required to carry out the fair housing policy in Title VIII. Agency responsibilities include where applicable:

(a) Financing or operating housing according to fair housing policy.

(b) Assuring that any housing financed is sold or rented according to fair housing policy. This includes assuring that any subdivision or multi-family housing project financed by the program agency is marketed in accordance with an Affirmative Fair Housing Marketing Plan.

## APPENDIX B

### NONCOMPLIANCE REMEDIES AND FORMAL SANCTIONS

#### 1 EFFORTS TO SECURE VOLUNTARY COMPLIANCE

##### a POLICY

When a recipient of USDA assistance is found to be in noncompliance, the Department's regulations require the responsible agency to make efforts to the fullest extent practicable to obtain voluntary compliance by the recipient. Also, the agency shall provide assistance and guidance to the recipient to help achieve full compliance.

(1) Noncompliance. Failure or refusal to comply with civil rights laws and Departmental regulations.



(2) A Determination of Noncompliance. A decision based on evidence that a recipient has failed or refused to comply with civil rights laws and regulations. The noncompliance may be disclosed by way of compliance reviews, complaint investigations or other information which supports the determination. Determinations of noncompliance shall be made either by the Office of Advocacy and Enterprise (OAE) or the USDA program agency administering a program of assistance.

c INFORMAL REMEDY

(1) The Department's regulations require the resolution of noncompliance by informal means whenever possible. The responsible agency must work with the noncomplying recipient and assist in any way to bring the recipient into compliance. Direct contacts, correspondence, and meetings should be used in developing plans of action identifying the discriminatory practices. The resources of OAE are available and should be used as necessary in this effort. The agency Civil Rights Director or comparable position is required to keep OAE currently informed about progress toward compliance.

(2) Sixty days following the date of determination that a recipient is in noncompliance, the Director of OAE is required to notify the Civil Rights Division, Department of Justice (DOJ). This notification will identify the recipient and program, the extent and nature of noncompliance, the type and degree of action which has been taken, and whether further efforts at voluntary compliance are planned or justified.

(3) When all reasonable efforts fail, the agency must so inform the recipient by registered mail, return receipt requested, and refer the case to OAE with recommendations for formal actions.

2 FORMAL ENFORCEMENT PROCEDURES

a POLICY

DOJ must be notified after a finding of noncompliance in which negotiations to achieve compliance exceed 60 days. Agencies are required to make every reasonable effort to secure the voluntary compliance of noncomplying recipients. If all efforts to achieve voluntary compliance fail, formal enforcement action may be

commended which may lead to termination of Federal assistance or may take the form of securing compliance by other means authorized by law. Rules of practice and procedure for administrative hearings are contained in 7 CFR 15.60 - 15.143.

b Procedures Leading to Termination of Assistance

Before an action to suspend or terminate assistance can become effective, the following steps must be taken:

(1) The Agency will: Notify the recipient that all efforts at achieving voluntary compliance have failed and that the case will be referred to the OAE for formal enforcement action. The record of referral to OAE shall include:

(a)  
Copies of all  
correspondence with the recipient.

(b)  
Copies of all compliance  
reviews of the recipient.

(c)  
A list of known witnesses,  
including their addresses, telephone  
numbers, and their official titles,  
with a brief statement of the  
matters about which they can  
testify.

(d)  
Eight copies of each  
relevant contract and agreement  
with the Department of Agriculture  
and, where appropriate, each  
relevant contract between the State  
and agency and the recipient.  
Included should be current and past  
agreements and copies of the  
recipient's civil rights assurances.

(e)  
A list of names, titles,  
mailing addresses and telephone  
numbers of parties involved,  
including the chief official of the  
recipient, where a State agency is  
involved, and the State  
administrative official responsible  
for the program.

(f)

A report of the specific dates and amounts of assistance provided and the programs under which the assistance was extended, citing legal and regulatory references for the program.

(g)

Documentation that the agency has met all administrative and legal requirements of the Department's regulations 7 CFR 15 by advising the recipient that it has failed to comply, that compliance cannot be secured by voluntary means, and that the case has been referred to the Office of Advocacy and Enterprise for enforcement action.

(h)

A brief statement of the affirmative allegations of discrimination which can be factually supported by the records.

(i)

A statement of all actions taken to achieve voluntary compliance.

(j)

A statement of the defenses the recipient may be expected to raise.

(2) The Office of Advocacy and Enterprise will:

(a)

Evaluate records for sufficiency.

(b)

Determine in conjunction with the Office of General Counsel (OGC) whether the case warrants termination proceedings.

(c)

Issue a ten-day letter to the recipient restating that voluntary compliance has not been

achieved, identifying acts, areas, practices and locations of noncompliance, and offering to assist the recipient to come into compliance. In termination actions, the letter will also offer opportunity for formal hearing. All ten-day letters are sent by registered mail return receipt requested. During the ten-day period, OAE will contact responsible officials of the recipient by telephone or telegraph to again offer assistance to correct the noncompliance.

(3) The Secretary of USDA will approve the action to suspend or terminate assistance if the results of the hearing support a decision of noncompliance, or if such a decision is supported by the evidence where a hearing was not held.

(4) The appropriate congressional committees will be notified of the decision to terminate assistance. Termination will not become effective until 30 days after the date of such notification.

### 3 SECURING COMPLIANCE BY OTHER MEANS AUTHORIZED BY LAW

A recipient may be compelled to comply with civil rights laws and Department Regulations through judicial enforcement. However, before any action to enforce compliance is taken, the following steps must be taken:

a The program agency will notify the recipient that all efforts to achieve compliance have been exhausted and that the case will be referred to OAE.

b OAE will send a ten-day letter, which is registered with return receipt requested, to the recipient describing the findings of noncompliance with an offer to assist. Additional contacts and offers of assistance must be made during the ten-day period.

c If the recipient fails to come into compliance during the ten days, the case will be referred to (OGC). A complete record of the case will be forwarded along with eight copies.

d After determining legal sufficiency of the record, OGC will refer the case to DOJ recommending appropriate legal action.